

EMPOWER OVERSIGHT

Whistleblowers & Research



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January 31, 2023

VIA ELECTRONIC TRANSMISSION: OIGFOIA@USDOJ.GOV

Office of Inspector General
U.S. Department of Justice
441 G Street, N.W.
6th Floor
Washington, DC 20530

RE: Request for Records Relating to DOJ-OIG's Decision Not to Investigate a Whistleblower Allegations of Systemic Abuses by the FBI

Dear FOIA Officer:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

On August 19, 2022, Steve Friend, an eight-year veteran of the Federal Bureau of Investigation (“FBI”) who was stationed in the Daytona Beach Resident Office, which reports to the Jacksonville Field Office, made protected disclosures (under 5 U.S.C. § 2303) to his supervisor concerning alleged violations of the Constitution, laws, and FBI policy in connection with the planned execution of arrest and search warrants the following week. [[Declaration of Steve M. Friend \(“Declaration”\) at ¶¶ 3, 4, and 10, attached.](#)]

His supervisor claimed to Special Agent Friend that he appeared to be under stress and suggested that he pursue counseling; characterized his disclosures as a refusal to participate in a class of cases,¹ which he would have to report up the chain of command; asked Special Agent Friend how he reckoned the Special Agent in Charge (“SAC”) of the field office would react to his disclosure; and inquired how he perceived his future working for the FBI. [[Declaration at ¶¶ 10 and 11.](#)]

¹ Special Agent Friend never refused to participate. Instead, he made a protected disclosure and asked to be assigned to alternative duties on the date of the execution of the arrest and search warrants. Ultimately, one day before the planned execution of the arrest and search warrants, he was directed by FBI management not to report to duty the following day.

On August 22, 2022, Special Agent Friend was instructed to report to the FBI's Jacksonville Field Office the following day. [Declaration at ¶¶ 12, 13, and 14.] As directed, on August 23, 2022, Special Agent Friend met with two Assistant Special Agents in Charge ("ASACs") in Jacksonville. He repeated and elaborated on the protected disclosure that he made the prior week to his supervisor. *Id.* The ASACs asked about his personal views on the class of cases in controversy; characterized him as a "bad teammate;" threatened to punish him if he refused to participate in the planned arrest and search warrants;² questioned his career prospects in the FBI; recommended counseling; and ruminated aloud that they did not know how the FBI would proceed against him, given that formal discipline is a slow process. *Id.* Approximately four hours after the meeting in Jacksonville, one of the two ASACs emailed Special Agent Friend, instructed him not to report for duty the next day, and notified him that the FBI was placing him on Absent Without Leave ("AWOL") status on August 24, 2022, the date of the planned execution of the arrest and search warrants. Additionally, the ASAC informed him that AWOL status could lead to disciplinary charges. *Id.* Special Agent Friend complied with the directive, did not report for duty pursuant to the instruction, and was recorded in the FBI personnel system as AWOL for that day as a result, despite having offered to perform other assigned duties.

On September 1, 2022, Special Agent Friend met with the SAC of the Jacksonville Field Office. [Declaration at ¶ 15.] She advised Special Agent Friend that, given his heretofore good reputation, she was disappointed with his refusal to participate in the arrest and search warrants on August 24th,³ and suggested that he needed to do some "soul searching" regarding whether he wanted to work for the FBI; theorized that Special Agent Friend's concerns about the class of cases in controversy exposed a belief that his colleagues were coopted by leadership priorities, which caused them to cross ethical and moral boundaries; expressed her personal support for the class of cases; and informed Special Agent Friend that she had referred him to the FBI's Office of Professional Responsibility and its Security Division, the latter of which was assessing his security clearance. *Id.*

On the evening of September 14, 2022, an ASAC in the Jacksonville Field Office called him and directed him to report to the field office the next morning (September 15, 2022) to attend a Security Awareness Briefing ("SAB"). Because he had already successfully completed the FBI's annual SAB requirement, he asked why he was being directed to attend a duplicative one-on-one SAB lecture. The ASAC responded "because you have made different choices than other people." Special Agent Friend then asked whether he could bring a lawyer with him to the meeting. The ASAC said he did not think so, but would ask and get back to him. By the next morning the ASAC had not resolved the question about his attorney attending the SAB, and Special Agent Friend called in sick.

On September 16, 2022, the Executive Assistant Director of the FBI's Human Resources Branch informed Special Agent Friend that, as the FBI's Security Programs Manager, she had suspended his security clearance. The suspension of Special Agent Friend's security clearance precludes him from entering FBI space and, thus, suspends his "authority to fulfill the duties and responsibilities of" his position. As grounds for her suspension of his clearance, the Executive Assistant Director claimed:

On 08/24/2022, you advised your supervisors of your objection to participating in the court authorized search and arrest of a criminal subject. During your communications, you espoused beliefs which demonstrate

² Again, Special Agent Friend did not refuse to participate. He made a protected disclosure and asked to be assigned to alternative duties on the date of the execution of the arrest and search warrants.

³ See, footnotes 1 and 2.

questionable judgement.⁴ On 09/03/2022, you entered FBI space and downloaded documents from FBI computer systems to an unauthorized flash drive and you subsequently failed to cooperate with a Security Awareness Briefing, demonstrating an unwillingness to comply with rules and regulations.

The Assistant Director of the FBI's Human Resources Branch's suspension of Special Agent Friend's security clearance halted his paycheck, achieving the exact same effect as a disciplinary adverse personnel action would have, but without any independent oversight or meaningful review.

I. Special Agent Friend's Complaint

On September 21, 2022, Special Agent Friend submitted to the Department of Justice, Office of Inspector General ("DOJ-OIG"), a complaint that, in addition to detailing numerous acts of whistleblower retaliation against him, includes allegations of systemic abuses of the Constitution, laws, and policy by the FBI. Specifically, Special Agent Friend's complaint includes allegations of four systemic abuses by the FBI:

- Evasion of case management policies to drive a false narrative supporting an FBI priority;
- Defiance of the Department of Justice's ("DOJ") Use of Force policy and FBI policy to send a message to disfavored actors;
- Retaliation against whistleblowers; and
- Exploitation of security clearances to avoid due process procedures applicable to disciplinary proceedings.

Evasion of Case Management Policies to Drive a False Narrative in Support of an FBI Priority

On January 7, 2021, just hours after thousands of critics of the results of the 2020 presidential election descended on the Capitol building, FBI Director Christopher Wray stated:

The violence and destruction of property at the U.S. Capitol building yesterday showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process. As we've said consistently, we do not tolerate violent agitators and extremists who use the guise of First Amendment-protected activity to incite violence and wreak havoc. Such behavior betrays the values of our democracy. Make no mistake: With our partners, we will hold accountable those who participated in yesterday's siege of the Capitol.

Let me assure the American people the FBI has deployed our full investigative resources and is working closely with our federal, state, and local partners to aggressively pursue those involved in criminal activity during the events of January 6. Our agents and analysts have been hard at work through the night gathering evidence, sharing intelligence, and working with federal prosecutors to bring charges. Members of the public can help by providing tips, information,

⁴ Special Agent Friend did not communicate with his managers on August 24, 2022. On that date, he complied with his ASAC's direction not to report for duty, and was placed on AWOL as a result of his compliance.

and videos of illegal activity at [fbi.gov/USCapitol](https://www.fbi.gov/USCapitol). We are determined to find those responsible and ensure justice is served.⁵

Two years later, Attorney General Merrick Garland characterized the FBI's investigation of the riot at the Capitol as "one of the largest, most complex, and most resource-intensive investigations in our history."⁶ He also advised that the investigation has been and is being led by, the FBI's Washington, D.C. Field Office ("WFO"), *id.*, and had previously stated that prosecutors "will hold accountable anyone who is criminally responsible for attempting to interfere with the . . . lawful transfer of power from one administration to the next,"⁷ which is inherently not confined to participation in riot at the Capitol.

Additionally, on June 15, 2021, Attorney General Garland announced the *National Strategy for Countering Domestic Terrorism*, a government-wide program designed to study, deter, disrupt, and prevent the full range of domestic terrorism threats.⁸ Introducing the national strategy, he explained that during President Biden's first week in office, he directed the Administration to undertake an assessment of the domestic terrorism threat, and to use it to develop a strategy. *Id.* The assessment was completed in March of 2021, and concluded that domestic violent extremists "pose an elevated threat to the Homeland in 2021." *Id.* He added that his experience on the ground confirms the assessment, noting that the number of the FBI's open domestic terrorism investigations had increased significantly during the fledgling year. *Id.*

The FBI defines "domestic terrorism" as activities that involve danger to human life; violate Federal or state criminal laws; appear to be intended to intimidate or coerce a civilian population, influence government, or affect the government operations; and occur primarily within the United States' territory.⁹ The FBI continually reviews and evaluates intelligence data to ensure that it identifies "Domestic Violent Extremist" operating with the United States' territory whose advocacy for particular ideological positions escalates to a threat of violence. *Id.* Currently, the government focuses on threats emanating from racial or ethnic, anti-government, environmental, and abortion-related biases. *Id.*¹⁰

According to case management and indexing procedures set forth at appendix J of the FBI's Domestic Investigations and Operations Guide ("DIOG"), the "Office of Origin" ("OO") of an investigative action is determined by, among various means, the residence of the subject of the investigation, the office that first received a complaint comprising the subject of the

⁵ FBI, [Director Wray's Statement on Violent Activity at the U.S. Capitol Building](https://www.fbi.gov/wanted/capitol-violence?utm_medium=email&utm_source=govdelivery#Director's-Statement) (January 7, 2021), available at https://www.fbi.gov/wanted/capitol-violence?utm_medium=email&utm_source=govdelivery#Director's-Statement.

⁶ DOJ, [Attorney General Merrick B. Garland Statement on the Second Anniversary of the January 6 Attack on the Capitol](https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-second-anniversary-january-6-attack-capitol) (January 4, 2023), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-second-anniversary-january-6-attack-capitol>.

⁷ Johnson, Kevin; Jansen, Bart, [Garland Vows to Pursue Charges on 'Anyone' Criminally Responsible for Jan. 6 When Pressed on Trump](https://www.usatoday.com/story/news/politics/2022/07/26/merrick-garland-charges-jan-6/10151899002/) (July 26, 2022), available at <https://www.usatoday.com/story/news/politics/2022/07/26/merrick-garland-charges-jan-6/10151899002/>.

⁸ DOJ, [Attorney General Merrick B. Garland Remarks: Domestic Terrorism Policy Address](https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-remarks-domestic-terrorism-policy-address) (June 15, 2021), available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-remarks-domestic-terrorism-policy-address>.

⁹ FBI, DHS, [Domestic Terrorism: Definitions, Terminology, and Methodology](https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view) (Updated), available at <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view>.

¹⁰ During his June 15th speech, Attorney General Garland singled out racially-, ethnically-, and anti-government motivated extremists as posing the greatest threat to society. See DOJ, [Attorney General Merrick B. Garland Remarks: Domestic Terrorism Policy Address](https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-remarks-domestic-terrorism-policy-address) (June 15, 2021), available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-remarks-domestic-terrorism-policy-address>.

investigation, or a location designated by the FBI’s headquarters. [Declaration at ¶ 8.]¹¹ Typically, a special agent within the OO is assigned responsibility for the investigation, including ensuring that it is conducted without delay. *Id.* If the OO develops a lead (*e.g.*, the need to interview a subject or witness who resides beyond the boundaries of the OO’s geographic area of jurisdiction), then it should “cut a lead” to another field office which is then called the Lead Office (“LO”), which will assign a special agent to execute the lead on behalf of the OO. [Declaration at ¶ 7.]

Additionally, according to the case management and indexing procedures of DIOG at appendix J, the OO—and the special agent it assigned—is responsible for the “proper supervision” of the investigation, whether such investigation is carried out within boundaries of the OO or at a geographically remote LO to which a lead has been sent. [Declaration at ¶ 8.] Similarly, a special agent’s supervisor is responsible to ensure that “all investigative activity, collection activity, and use of investigative methods [by the agent] comply with the Constitution, Federal law,” the DIOG, and other applicable legal and policy requirements; confirm that the agent creates and maintains reliable and trustworthy files; and to review the agent’s investigative files every 90 days to verify efficiency and compliance with applicable law. DIOG, §§ 3.4.2.4, 3.4.2.9, and 3.4.4.1 – 3.4.4.3.

Special Agent Friend explained that, deviating from the FBI’s Domestic Investigations and Operations Guide (“DIOG”), officials in the FBI’s Washington, D.C. Field Office (“WFO”) identified subjects to investigate in connection with the January 6, 2021, riot at the Capitol and/or interference with the transition of executive power, and sent information packets concerning such subjects to field offices nationwide with instructions to open investigations. [Declaration at ¶ 8.]¹² As directed by the WFO, the recipient field offices opened investigations, designating themselves as the Offices of Origin (“OOs”), and assigned local special agents as the responsible case agents. *Id.* Thereafter, the WFO managed the cases and performed the bulk of the investigative work, including presenting cases to the offices of the United States Attorneys for prosecution. *Id.* For their part, the nominally responsible case agents assigned to the cases performed such functions as the WFO directed, *Id.*, and field office supervisors effectively had no role in monitoring compliance with the Constitution, laws, and the DIOG, [Declaration at ¶ 9]. WFO supervisors exercised *de facto* control of the cases despite documentation indicating that the OOs were other field offices. *Id.*

Not only is Special Agent Friend’s disclosure fully consistent with Attorney General Garland’s assertion that the WFO controls the FBI’s investigation of the January 6th riot at the Capitol and interference with the transition of executive power,¹³ it adds important context to the Attorney General’s assertion concerning the sharp increase in domestic terrorism cases in 2021.¹⁴

¹¹ Unless it is an emergency and an official with approval authority is unavailable, approval for all deliberate deviations from the DIOG must be requested in writing addressed to an Assistant Director of the appropriate operational program and to the Office of Integrity and Compliance, with a notice to the General Counsel. DIOG, § 2.7.2. Of course, one may not deviate from the DIOG until after the requested approval is granted. *Id.*

¹² FBI employees are required to report in writing all instances of substantial non-compliance with the DIOG (*e.g.*, noncompliance that has the potential to adversely affect an individual’s rights or liberties, or failure to obtain supervisory approval). DIOG, § 2.8.2. If the non-compliance occurs in a field office, the writing must be routed through the Division Compliance Officer to the SAC or Assistant Director In Charge. DIOG, § 2.8.3.

¹³ See DOJ, Attorney General Merrick B. Garland Statement on the Second Anniversary of the January 6 Attack on the Capitol (January 4, 2023), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-second-anniversary-january-6-attack-capitol>.

¹⁴ See DOJ, Attorney General Merrick B. Garland Remarks: Domestic Terrorism Policy Address (June 15, 2021), available at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-remarks-domestic-terrorism-policy-address>.

Special Agent Friend pointed out that by departing from the DOIG in this way, FBI headquarters and the WFO would create false and misleading crime statistics reports to Congress. [[Declaration at ¶ 16](#)]. Instead of hundreds of domestic terrorism cases isolated in the WFO, as a consequence of events occurring on a single day, and the FBI's extraordinary effort to investigate anyone remotely associated—even passively—with the riot at the Capitol on January 6th, the FBI has disbursed the cases throughout its field offices, *Id.*, causing a statistical surge nationwide.

Defiance of Use of Force Policy to Send a Message to Politically Disfavored Actors

The DIOG notes that FBI's law enforcement authorities are conditioned on "rigorous obedience to the Constitution," and accordingly the Attorney General established a set of basic principles "that serve as the foundation of all FBI mission-related activities."¹⁵ These principles include protecting individual rights and using "the least intrusive means that do not otherwise compromise FBI operations."¹⁶ For intelligence and evidence gathering (*e.g.*, the execution of a search warrant) considerations that must be balanced to ensure that the means used are the least intrusive means include the:

- Seriousness of the crime or national security threat;
- Strength and significance of the intelligence/information to be gained;
- Amount of information already known about the subject or group under investigation; and
- Requirements of operational security, including protection of sources and methods.¹⁷

Similarly, regarding the execution of an arrest warrant, the DIOG limits the use of physical force to the threshold "reasonable and necessary to take custody and overcome all resistance of the arrestee, and to ensure the safety of the arresting agents, the arrestee and others in the vicinity of the arrest."¹⁸

Effective July 19, 2022, Attorney General Garland updated the "Use-of-Force" policy applicable to DOJ and its sub-agencies (*e.g.*, the FBI).¹⁹ According to the updated policy, FBI officials:

may use only the force that is objectively reasonable to effectively gain control of an incident, while protecting [FBI officials] and others. . . . Officers may use force only when no reasonably effective, safe, and feasible alternative appears to exist and may use only the level of force that a reasonable officer on the scene would use under the same or similar circumstances.

¹⁵ DIOG, § 4.1.1.

¹⁶ DIOG, §§ 4.1.1, 18.2.

¹⁷ DIOG, § 4.4.4.

¹⁸ DIOG, § 19.5.2.

¹⁹ Memorandum from Attorney General Garland, *Subject: Department's Updated Use-of-Force Policy* (May 20, 2022), available at <https://www.justice.gov/ag/page/file/1507826/download#:~:text=Officers%20may%20use%20force%20only,the%20same%20or%20%20similar%20circumstances>.

Id. As guidance for discerning the “reasonableness” of required force, the policy cites careful attention to the facts and circumstances of particular cases, the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the arresting officer or others, and whether the subject resists or attempts to evade arrest. *Id.*

During the week of August 15, 2022, Special Agent Friend became the aware of the FBI’s imminent execution of arrest and search warrants of numerous persons who resided in the geographic jurisdiction of the FBI’s Jacksonville and Tampa field offices and were subjects of investigation for participating in the January 6th riot at the Capitol and/or interfering with the transition of executive power. [Declaration at ¶ 10]. The executions of the warrants were scheduled for August 24, 2022, and the plans of execution included the use of an FBI SWAT team for at least one of the arrests. *Id.*

On Friday, August 19, 2022, Special Agent Friend approached his supervisor in the Daytona Beach Resident Office, and advised him that he was concerned that the plans for the executions of the warrants applicable to subjects of investigations of the riot at the Capitol appeared to violate DOJ and FBI policies and by extension the Constitution. [Declaration at ¶¶ 10 and 11]. Specifically, he stated that the execution plans for the warrants threatened to compromise the subjects’ due process rights (*i.e.*, overzealous charges, biased jury pools in the District of Columbia, and excessive pre-trial detention) and to violate the DOJ’s Use of Force and the FBI’s least intrusive methods policies. [Declaration at ¶ 11]. In the latter regard, he believed, based on his experience, that it would be inappropriate to use FBI SWAT teams to arrest a subject of a misdemeanor offense, *Id.*, someone who had previously cooperated with the investigation, or someone who could more safely be apprehended in another manner. Alternatively, he proposed that in lieu of using force to arrest subjects at their homes, the FBI or local law enforcement could issue court summons, as many of the subjects were represented by counsel and had cooperated with FBI interview requests; or the subjects could be arrested away from their homes as they traveled from points A to B. *Id.* His supervisor dismissed his concerns, by replying that the warrants were lawful court orders, [Declaration at ¶¶ 10], suggesting that his supervisor does not understand that DOJ/FBI policy and Constitutional standards apply to the application of court orders; and proceeded to retaliate against him, suggesting that he is unaware of statutory protections applicable to whistleblowers.

Subsequently, on August 23, 2022, and September 1, 2022, Special Agent Friend met with his ASACs and SAC in the Jacksonville Field Office, and repeated the concerns that he had discussed with his supervisor on August 19th. [Declaration at ¶¶ 12 – 15]. Like his supervisor before them, the ASACs and SAC dismissed his concerns and retaliated against him. *Id.*

Special Agent Friend’s concerns about the FBI violating applicable Use of Force and least intrusive means policies when executing warrants are not limited to the particular operation imminent at the time he made his protected disclosures, or even to arrests and searches of Capitol rioters. Recently, the media has extensively covered the FBI’s selective use of unnecessarily intrusive tactics such as its use of tactical teams and equipment to arrest non-violent subjects like Roger Stone and Mark Houck and its unprecedented search of Mar-A-Lago.²⁰ The selective use of such tactics to send a message of intimidation to politically disfavored subjects would be improper. Thus, Special Agent Friend had a reasonable basis to

²⁰ See, e.g., Dwinell, Joe, *FBI’s Roger Stone Raid Sends Chilling Message* ((January 26, 2019), available at <https://www.bostonherald.com/2019/01/26/fbis-roger-stone-raid-sends-chilling-message/>); Catholic News Agency, *FBI Raids Home of Pro-life Leader on Questionable Charges* (September 23, 2022), available at <https://www.catholicnewsagency.com/news/252380/fbi-raids-home-of-pro-life-leader-on-questionable-charges>; McGurn, William, *Justice for Mark Houck* (January 30, 2023), available at <https://www.wsj.com/articles/justice-for-mark-houck-fbi-abortion-pro-life-planned-parenthood-face-act-not-guilty-crime-arrest-11675113079> (Mr. Houck is a pro-life advocate who had cooperated with the FBI’s investigation and who had agreed to accept a summons and surrender himself, but whom the FBI arrested at his home “as though he were John Dillinger”); Miller, Tucker, and Balsamo, *FBI’s Search of Trump’s Florida Estate: Why Now?* (August 9, 2022), available at <https://apnews.com/article/donald-trump-mar-a-lago-fbi-search-99097089194e736315c366a0e8fbafee>.

object and make protected disclosures about the resulting threats to public safety resulting from political motives apparently creeping into what should be strictly tactical law enforcement decisions on the merits.

Retaliation Against Whistleblowers

Section 2303 of Title 5 of the United State Code prohibits the FBI's management from taking an adverse personnel action (*e.g.*, demotion, removal, or suspension) against an employee, or failing to take a beneficial personnel action (*e.g.*, hiring or promotion) against an applicant for employment or an employee, "as a reprisal for a disclosure of information" to appropriate authorities, when the applicant or employee reasonably believes that the content of the information:

- Involves the violation of laws, rules, or regulations, or
- Evidences gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.²¹

At a minimum, Special Agent Friend's immediate supervisor, his ASACs, his SAC, and the Executive Assistant Director of the FBI's Human Resources Branch retaliated against him because he had the audacity to make protected disclosures about his concerns that the FBI's approach to the investigation (including the execution of search warrants) and arrest of alleged participants in the January 6th riot at the Capitol and/or persons who allegedly interfered with the transition of executive power. In response to his disclosures, his supervisor questioned his fitness for duty, suggested that he pursue counseling, asked how he reckoned the SAC would react to his disclosure, and implied that he had imperiled his career. [Declaration at ¶¶ 10 and 11.]

His ASACs characterized him as a "bad teammate," threatened to punish him if he refused to participate in planned execution of arrest and search warrants, questioned his future career prospects in the FBI, recommended counseling, and placed him on AWOL status on August 24th (after directing him not to report for duty on that date). [Declaration at ¶¶ 12, 13, and 14.]

His SAC expressed disappointment that he "refused" to participate in the arrest and search warrants on the date he was placed on AWOL, suggested that he reconsider his career in the FBI, questioned his belief system and his opinions of his colleagues, and referred him to the FBI's Office of Professional Responsibility and its Security Division. [Declaration at ¶ 15.]

The Executive Assistant Director of the FBI's Human Resources Branch suspended his security clearance. Among other reasons for her decision, she cited an erroneous August 24, 2022, conversation with his supervisors. In fact, he did not tell his supervisors on August 24th that he objected to participating in searches or arrests. He had been instructed not to report for duty, was placed on AWOL, and had no contact with his supervisors that day.

Further, Special Agent Friend may not be the only FBI employee who was retaliated against for questioning the FBI's approach to the investigation (including the execution of search warrants) and arrest of alleged participants in the January 6th riot at the Capitol and/or persons who allegedly interfered with the transition of executive power. During their meeting on September 1st, Special Agent Friend advised his SAC that many of his colleagues had expressed to him similar concerns about the FBI's approach. His SAC disputed his contention, claiming that Special Agent Friend's views represented an extremely small minority of the FBI's

²¹ 5 U.S.C. § 2303(a).

workforce. Her rejoinder implies that management was aware—through receipt of other protected disclosures or by surveillance—that Special Agent Friend’s concerns were shared by some “minority” of the FBI’s staff. Moreover, her rebuttal signifies that she refused to acknowledge or failed to comprehend that there could be more special agents who shared his concerns but were too scared of retaliation to voice those concerns. Indeed, disclosing concerns about the FBI’s violations of the Constitution, laws, and regulations is widely perceived to pose a serious risk to one’s career and invites whistleblower retaliation by the FBI’s management, for which there are woefully inadequate remedies.

Abuse of Security Clearance Inquiries to Avoid Due Process Procedures Applicable to Disciplinary Proceedings

Towards the conclusion of Special Agent Friend’s meeting with the two ASACs on August 23rd, the ASACs ruminated aloud that they did not know how the FBI would proceed against him from a disciplinary perspective. [Declaration at ¶¶ 12, 13, and 14.] Specifically, the ASACs’ groused that formal discipline is a slow process. *Id.*

From the perspective of an FBI manager who wants to be quickly and efficiently resolve personnel issues, the ASACs’ critique of the FBI’s procedures for “adverse actions” (*i.e.*, suspensions for more than 14 days, demotions, and removals) is on target. The process is slow and cedes the manager’s decision-making. Indeed, DOJ-OIG reports that the FBI’s goal—not actual experience—is “to complete the investigation and adjudication of misconduct cases in 180 days.”²² However, as DOJ-OIG notes, this period excludes appeals of adjudications; the FBI has an informal goal of resolving appeals of adjudications in an additional 120 days. Moreover, once a manager initiates a disciplinary process, he/she loses the ability to control of not only the timing of the final action, but also of the proposed action itself.

The FBI’s disciplinary process consists of four phases:

- Reporting misconduct allegations,
- Investigating allegations,
- Adjudicating investigations, and
- Appealing adjudications.²³

The FBI’s Inspection Division (“ID”) and Office of Professional Responsibility (“OPR”)—offices with the FBI’s headquarters—are responsible for the administration of the four phases. *Id.*

First, according to the FBI’s Manual of Administrative Operations and Procedures (“MOAP”), all allegations of employee misconduct must be reported to OPR, which will “determine and advise who will conduct the investigation” of the alleged misconduct.²⁴ Typically, OPR will assign the investigation to the Assistant Director, SAC, or Legal Attache of the office of the subject of the investigation. *Id.*

²² DOJ-OIG, *Report No. I-2009-002: Review of the Federal Bureau of Investigation’s Disciplinary System*, pp. 3, 24, (May 2009), available at https://www.oversight.gov/sites/default/files/oig-reports/final_4.pdf.

²³ DOJ-OIG, *Report No. 21-127: Review of the Federal Bureau of Investigation’s Adjudication Process for Misconduct Investigations*, p. 4., (September 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-127.pdf>.

²⁴ MOAP, Part 1, § 13.2.

Second, the investigation must be initiated promptly, and generally “every logical lead which will establish the true facts should be completely run out.”²⁵ The record of the investigation should include “the initial allegation; the investigative results; aggravating or mitigating circumstances; statement of specific charge(s) and the employee’s answer(s) including defenses to the specific charge(s), if any.” *Id.* The investigation shall not be “complete until the specific allegations that may justify disciplinary action are made known the employee who may be disciplined and the employee is afforded reasonable time to answer the specific allegations.” *Id.*

During the pendency of the investigation, it is not a foregone conclusion that the subject of the investigation will be prevented from performing his/her duties. Rather, the Assistant Director, SAC, or Legal Attache assigned to conduct the investigation is authorized to temporarily assign the subject to other duties, “if the circumstances surrounding the allegation indicate that such action warranted.”²⁶ However, all such reassignment decisions must be made on a case-by-case basis; they “should not be made automatically.” *Id.*

Investigation findings are recorded in written reports that are filed in the subject’s personnel file in the field office and at the FBI’s headquarters.²⁷ The report format includes recommendations for what, if any, administrative action is appropriate.²⁸

Third, disciplinary recommendations are guided by a MOAP schedule, but—except for certain minor offenses delegated to management in FBI’s field offices—final determinations of the appropriate discipline to propose against an employee accused of misconduct is reserved to the FBI’s headquarters,²⁹ specifically it is reserved to the OPR’s Adjudication Units.³⁰ The Assistant Director of OPR reviews the determinations of the Adjudication Units and if he/she agrees that discipline is warranted, then “the action is taken and the employee notified.”³¹

Fourth, if the Assistant Director of OPR agrees that discipline is warranted and takes an adverse action, then the employee may appeal the decision to the Assistant Director of ID.³²

To circumvent these formal disciplinary procedures, the FBI can rapidly, and without meaningful, if any, due process, suspend special agents’ security clearances and place them in a leave without pay status. On September 1st Special Agent Friend’s SAC advised him that she had referred him to the FBI’s Security Division for a review of his clearance. Fifteen days later—not the combined 300-day goal set forth in the FBI’s discipline procedures (*i.e.*, 180 days for investigation and adjudication and 120 days for appeal of the adjudication), the Executive Assistant Director of the FBI’s Human Resources Branch suspended his security clearance and

²⁵ MOAP, Part 1, § 13.3.

²⁶ MOAP, Part 1, § 13.1.

²⁷ MOAP, Part 1, §§ 13.7, 13.7.1, and 13.7.2.

²⁸ MOAP, Part 1, § 13.7.1.

²⁹ MOAP, Part 1, § 13.13.

³⁰ DOJ-OIG, *A Review of Allegations of a Double Standard of Discipline at the FBI* (November 21, 2022), available at <https://oig.justice.gov/sites/default/files/archive/special/0211/chapter2.htm>.

³¹ MOAP, Part 1, § 14-4.2; *see also*, DOJ-OIG, *A Review of Allegations of a Double Standard of Discipline at the FBI* (November 21, 2022), available at <https://oig.justice.gov/sites/default/files/archive/special/0211/chapter2.htm>.

³² DOJ-OIG, *A Review of Allegations of a Double Standard of Discipline at the FBI* (November 21, 2022), available at <https://oig.justice.gov/sites/default/files/archive/special/0211/chapter2.htm>.

halted his paycheck. It has the exact same effect as a disciplinary adverse personnel action would have, but without any independent oversight or meaningful review.

It often seems like the Nation's two principal political parties cannot agree on anything. At least one exception, however, is a shared belief that the Executive branch of government has grown less inhibited about improperly revoking security clearances to silence its detractors. For example, Senator Warner accused former President Trump of "abusing" the security clearance process "to punish his political opponents," in particular John Brennan.³³ On the other side of the aisle, former Representative Hunter complained about the Army's retaliation against retired Lt. Colonel Jason Amerine, including the suspension of his security clearance at the FBI's urging, for revealing to Congress bureaucratic infighting that impaired the Nation's efforts to recover hostages.³⁴ And, indeed, in connection with Special Agent Friend's circumstances, Senators Grassley and Johnson admonished Attorney General Garland and FBI Director Wray that "The FBI should never suspend security clearances as a form of punishment or to retaliate against patriotic whistleblowers for stepping forward to report potential wrongdoing."³⁵

Further, following the revocation of Mr. Brennan's security clearance, the Project on Government Oversight ("POGO") reported:

The revocation of Mr. Brennan's individual clearance, though conspicuous and newsworthy, isn't immediately detrimental to Mr. Brennan or to the public. In fact, it isn't even clear if the former director has actually lost it yet. Rather, what's more concerning is what the loss represents: the escalating weaponization of security clearances as a form of reprisal.

Whistleblowers have felt this weaponization for years—many have lost clearances because of retaliatory investigations initiated under false pretenses by their supervisors after speaking out against waste, fraud, or abuse. To make matters worse, others who would have come forward with additional life-saving disclosures remain silent observers of abuse for fear of losing their livelihoods.³⁶

In other words, what the FBI has done to Special Agent Friend does not appear to be an isolated event. It very well may be an example of a widespread FBI practice—one that the Office of Inspector General should be reviewing for systemic abuses.

II. DOJ-OIG's Response to Special Agent Friend's September 21st Complaint

On December 2, 2022, DOJ-OIG advised Daniel Meyer, Special Agent Friend's legal counsel, that "[a]fter careful consideration and in view of the limited resources of the OIG, we

³³ Sen. Mark Warner, *On Senate Floor, Warner Warns Trump: Stop Abusing Security Clearance Process to Punish Critics* (August 21, 2018), available at <https://www.warner.senate.gov/public/index.cfm/2018/8/on-senate-floor-warner-warns-trump-stop-abusing-security-clearance-process-to-punish-critics>.

³⁴ Rep. Duncan Hunter, *Make No Mistake: The FBI and Army Retaliated Against a Hero* (December 17, 2015), available at <https://warontherocks.com/2015/12/make-no-mistake-the-fbi-and-army-retaliated-against-a-hero/>; see also, Brian, Danielle, and Smithberger, Mandy, *How the System Went After a War Hero: Jason Amerine Goes to Washington* (December 10, 2015), available at <https://warontherocks.com/2015/12/how-the-system-went-after-a-war-hero-jason-amerine-goes-to-washington/>.

³⁵ September 26, 2022, letter to Attorney General Garland and FBI Director Wray from Senators Charles E. Grassley and Ron Johnson, p. 3, available at https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_to_doi_fbi_stephen_friend.pdf.

³⁶ Jones, Rebecca, *Revoking Clearances on a Whim Hurts Whistleblowers—and the Rest of Us* (September 14, 2018), available at <https://www.pogo.org/analysis/2018/09/revoking-clearances-on-a-whim-hurts-whistleblowers-and-the-rest-of-us>.

have decided not to open an investigation of the allegations that you raise.” Nonetheless, in its letter, DOJ-OIG went on:

- Effectively to affirm the importance of Special Agent Friend’s allegations of the FBI’s systemic abuses;
- Expressed its desire to refer his allegations to the FBI’s “Inspection Division³⁷ for further action;” and
- Threatened to “close the matter and take no further action” (emphasis original), if Special Agent Friend refused to consent to the DOJ-OIG’s referring his allegations of the FBI’s systemic abuses back to the FBI.

In addition to threatening to close Special Agent Friend’s complaint unless he consents to the referral of his complaint of systematic abuses back to the alleged abuser, DOJ-OIG’s refusal to investigate his allegations—which it agrees are important—on the basis of resource grounds is bafflingly unpersuasive. Inquiries at the heart of great national political controversies like this are the subjects most in need of the sort of independent, nonpartisan, factually grounded, objective review that inspectors general were created to provide.

Could the DOJ-OIG, with its hundreds of agents, attorney, and multiple field offices around the country really be so overextended that it has no capacity to investigate whether:

- (1) the FBI’s investigative statistics are being skewed to support a false narrative of a nationwide surge in domestic terrorism;
- (2) the FBI is selectively using unreasonable force and/or intrusive measures against politically disfavored subjects;
- (3) the FBI is retaliating against whistleblowers who disclose and object to 1 and 2; or
- (4) the FBI is abusing security clearance processes to avoid following the FBI’s standard disciplinary processes?

RECORDS REQUEST

To shed light on the rationale for the DOJ-OIG’s refusal to investigate Special Agent Friend’s allegations of the FBI’s systemic abuses of the Constitution, laws, and policy, pursuant to the Freedom of Information Act (“FOIA”),³⁸ Empower Oversight requests:

1. All communications between and among DOJ-OIG personnel relative to the information Special Agent Friend submitted on or about September 21, 2022.
2. Any investigative activities undertaken DOJ-OIG to follow-up on or confirm/refute information that Special Agent Friend submitted on or about September 21, 2022.

³⁷ The FBI’s Inspection Division “conducts internal investigations, reviews operation performance and use-of-enforcement authorities in all investigative programs, and conducts special inquiries.” FBI, *Suzanne Turner Named Assistant Director of the Inspection Division* (February 16, 2022), available at <https://www.fbi.gov/news/press-releases/suzanne-turner-named-assistant-director-of-the-inspection-division>. The division is currently headed by an assistant director with substantial prior immersion in the FBI’s counterterrorism, intelligence, and national security programs. *Id.*

³⁸ 5 U.S.C. § 552.

3. All information supporting DOJ-OIG's rationale for concluding that the information Special Agent Friend submitted on or about September 21, 2022, did not warrant investigation by DOJ-OIG.

DEFINITIONS

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

“INCLUDING” means comprising part of, but not being limited to, the whole.

INSTRUCTIONS

The time period of the requested records is January 6, 2021, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media”³⁹ and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the rationale for the DOJ-OIG’s refusal to investigate Special Agent Friend’s allegations of the FBI’s systemic abuses of the Constitution, laws, and policy.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please don’t hesitate to contact me with any questions.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

³⁹ On September 23, 2021, in connection with a FOIA appeal arising from Empower Oversight’s August 12, 2022, FOIA request, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. See, “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a “media requestor” in seeking ethics records of senior officials,” Empower Oversight Press Release (Sep 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>. Thereafter, numerous other agencies recognized Empower Oversight as a media requester.

Declaration of Stephen M. Friend

I, Stephen M. Friend, pursuant to 28 U.S.C. §1746, hereby declares as follows:

1. I am a person over eighteen (18) years of age and competent to testify. Upon my belief and information, I make this Declaration on personal knowledge and in support of my complaint of reprisal and disclosure to the Office of Special Counsel, and against the Federal Bureau of Investigation (hereinafter the "FBI").

2. I am an FBI Special Agent currently on suspension. I graduated from the University of Notre Dame in 2007 and was employed as an accountant in private practice between 2007 and 2008. In 2009 I was sworn in as a Peace Officer for the Savannah Chatham Metro Police Department in Savannah Chatham Georgia. I served as a Peace Officer for said Department until 2012 when I joined my father's accounting firm for one year. In 2013 I joined the Pooler Police Department in Pooler Georgia as a Peace Officer until 2014.

3. On June 14, 2014, I joined the FBI as a new agent trainee. Following my graduation from Quantico's New Agent Academy I was posted to the FBI's Omaha Division/Sioux City Resident Agency tasked with investigating violent crimes and major offenses occurring in Indian Country. I was also a member of the FBI's Omaha SWAT Team. While in that posting I also served as an acting Special Supervisory Special Agent.

4. In June of 2021 I was transferred to the FBI's Jacksonville Florida Field Office/Daytona Beach Residency Agency as a Special Agent tasked with investigating child exploitation and human trafficking. In October of 2021, an Assistant Special Agent in Charge (ASAC) informed my supervisor that I was reassigned as a member of the Joint Terrorism Task Force (hereinafter "JTTF") and directed to concentrate my time towards domestic terrorism investigations. The ASAC communicated that the reassignment was necessary due to the voluminous number of J6 investigations and rising threats of "domestic violent extremism."

5. I was also told that child sexual abuse material investigations were no longer an FBI priority and should be referred to local law enforcement agencies. Prior to the incidents described below I received exemplary performance

reviews and numerous awards throughout my eight-year FBI career. Most recently, in July of 2022 the FBI conferred me with an "On-The-Spot" financial award.

6. **My concerns are as follows:** Stephen M. Friend, made a disclosure, of which an acting responsible official had knowledge, after which I was subjected to an adverse action.

7. As background information, full investigation casefiles within the FBI are labeled in three sections. The first section denotes the nature of the criminal offense. The second section identifies the FBI Field Office with responsibility for investigating. The third section is a unique case number populated by the FBI's SENTINEL case management system and attributable to the investigation. Additionally, if the investigating Case Agent requires assistance from another field office (i.e., interviewing a subject or witness who resides out of the Case Agent's geographical area of responsibility), investigative policy guides the Case Agent to "cut a lead" to Special Agents in another Field Office requesting that they take certain investigative action to assist the Case Agent. The "lead" facilitates timely investigation without forcing the Case Agent to engage in costly and time-consuming travel to areas beyond his area of responsibility.

* Domestic Investigations and Operations Guide (DIOG)
Appendix J: (U) Case File Management and Indexing

* J.1.2 (U) Investigative Leads and Lead Office (LO)

(U//FOUO) Leads are sent by EC, or a Lead Request document, to offices and assigned to individuals/organizations in order to aid investigations. When the OO sets a lead to another office, that office is considered a Lead Office (LO).

(U//FOUO) There are only two types of investigative leads: "Action Required" and "Information Only."

* J.1.2.1 (U) Action Required Lead

(U//FOUO) An action required lead must be used if the sending office requires the receiving LO to take some type of investigative action.

(U//FOUO) An action required lead may only be set out of an open investigative file, including an:

A) (U) Assessment file;

- B) (U) Predicated investigation file;
- C) (U) Pending inactive investigation file; or
- D) (U) Unaddressed work file...

8. Accordingly, investigations stemming from the January 6, 2021, Capitol Hill protest (hereinafter "J6") could be assigned, according to Domestic Investigations and Operations Guide (DIOG) Appendix J, to Special Agents working at the "Office of Origin (OO)." Per DIOG guidance, Washington D.C. Field Office (WFO) is a logical OO because WFO's area of responsibility includes Washington D.C. If deemed the appropriate OO, any investigations or assessments opened by WFO would be marked with the second section casefile label of "WF." Should investigative actions be necessary outside of Washington D.C., the WFO Case Agent should "cut a lead" to the appropriate FBI Field Office. In the event that an alternative FBI Field Office assumed the role as OO (i.e., because a subject resides in the OO's area of responsibility) any investigations or assessment opened would be marked with the second section casefile label attributable to that Field Office (i.e., "DL" for FBI Dallas). Should investigative actions be necessary outside of the OO's area of the responsibility, the Case Agent should "cut a lead" to the appropriate FBI Field Office. Regardless of the particular OO and according to DIOG Appendix J, the assigned Case Agent assumes management responsibilities for all aspects of the assessment or investigation.

* Domestic Investigations and Operations Guide (DIOG) Appendix J: (U) Case File Management and Indexing.

- o J.1 (U) Investigative File Management
 - o J.1.1 (U) Office of Origin (OO)
 - o (U//FOUO) Generally the Office of Origin (OO) is determined by:
 - A) (U//FOUO) The residence, location or destination of the subject of the investigation;
 - B) (U//FOUO) The office in which the complaint is first received;
 - C) (U//FOUO) The office designated by FBIHQ as OO in any investigation.

* Domestic Investigations and Operations Guide (DIOG) Appendix J: (U) Case File Management and Indexing

- o J.1 (U) Investigative File Management

- o J.1.3 (U) Office of Origin's (OO) Supervision of Cases (U//FOUO) The OO is responsible for proper supervision of Assessments and investigations in its own territory and being conducted in a LO. The FBI employee, usually an FBI Special Agent, to whom an investigation is assigned, is often referred to as the "Case Agent." An FBI employee is personally responsible for ensuring all logical investigation is initiated without undue delay, whether the employee is assigned in the OO or in a LO; this includes setting forth Action Required or Information Only leads as appropriate for other offices or other FBI employees in his/her own office. The OO Case Agent has overall responsibility for supervision of the investigation..

The FBI is following an atypical procedure. J6 task force members in Washington D.C. identify potential subjects and possible locations where these individuals reside. The task force disseminates information packets to Field Offices around the country. If an assessment or investigation is opened for a J6 subject, the recipient Field Offices become the official OO. However, while Special Agents and Task Force Officers in these Field Offices are assigned the role of "Case Agent," the J6 task force effectively manages the cases and performs the bulk of investigative work. The Case Agents perform investigative actions at the direction of the J6 task force. The J6 task force has the preeminent role for presenting J6 cases to the United States Attorney's Office for prosecution.

9. In October of 2021, I was assigned to J6 cases on behalf of Special Agents working in Washington D.C. On these occasions, the J6 Task Force members disseminated information to my office with instructions to perform logical investigative actions (such as surveillance or subject interviews). Members of the Daytona Beach Resident Agency (DBRA) Joint Terrorism Task Force (JTTF) completed and documented these tasks. Later, J6 Task Force members in Washington D.C. reviewed the work and requested additional investigative actions be performed or pressured members of my local JTTF to open full investigations. The J6 Task Force members assured the JTTF that once the case was opened, they would perform future investigative work and paperwork for the casefile. In accordance supervisor roles and responsibilities outlined in the DIOG, the J6 Task Force supervisors approved this work before it was submitted to the casefile. Resultantly, there are active criminal investigations

of J6 subjects in which I am listed as the "Case Agent," but have not done any investigative work. Additionally, my supervisor has not approved any paperwork within the file. J6 Task Force members are serving as Affiants on search and arrest warrant affidavits for subjects whom I have never investigated or even interviewed but am listed as a "Case Agent." The J6 Task Force tasked the DBRA JTTF with executing these warrants.

* Domestic Investigations and Operations Guide (DIOG) 3.5 (U) Supervisor Roles and Responsibilities

* 3.5.2.1 (U) Approval/Review of Investigative or Collection Activities

(U//FOUO) Anyone in a supervisory role who approves/reviews investigative or collection activity must determine whether the standards for opening, approving, conducting, and closing an investigative activity, collection activity or investigative method, as provided in the DIOG, have been satisfied.

(U//FOUO) Only FBI supervisory employees and representatives from other government agencies (OGA) assigned to the FBI under the Joint Duty Assignment Program or the Intergovernmental Personnel Act as supervisors (as defined in DIOG subsection 3.5.1) may approve the serialization of investigative records into Sentinel. Additionally, whenever an OGA supervisor (as described above) approves an investigative record, an FBI supervisor must also approve the record into Sentinel. An OGA supervisor may not approve investigative methods (i.e., DIOG Section 18 methods) or investigative activities (e.g., UDP and OIA).

* Domestic Investigations and Operations Guide (DIOG) Appendix J: (U) Case File Management and Indexing

o J.1 (U) Investigative File Management

J.1.3 (U) Office of Origin's (OO) Supervision of Cases (U//FOUO) The OO is responsible for proper supervision of Assessments and investigations in its own territory and being conducted in a LO. The FBI employee, usually an FBI Special Agent, to whom an investigation is assigned, is often referred to as the "Case Agent." An FBI employee is personally responsible for ensuring

all logical investigation is initiated without undue delay, whether the employee is assigned in the OO or in a LO; this includes setting forth Action Required or Information Only leads as appropriate for other offices or other FBI employees in his/her own office. The OO Case Agent has overall responsibility for supervision of the investigation...

10. During the week of August 15, 2022, I became aware of imminent arrests of J6 subjects and searches of their respective residences within the FBI's Jacksonville and Tampa Field Office areas of responsibility. Simultaneous takedowns were scheduled to occur on August 24, 2022. Due to perceived threats levels, an FBI SWAT team was enlisted to arrest one of the arrests. On Friday, August 19, 2022, I spoke with my front-line supervisor, SSRA Greg Federico, on two separate occasions to disclose my concerns about potential DIOG policy violations employed during the investigative processes. SSRA Federico listened to my concerns but emphasized that the warrants were lawful court orders. He said that these operations were one step in the process and that the subjects would be afforded all due process.

11. I responded that it was inappropriate to use an FBI SWAT team to arrest a subject for misdemeanor offenses and opined that the subject would likely face extended detainment and biased jury pools in Washington D.C. I suggested alternatives such as the issuance of a court summons or utilizing surveillance groups to determine an optimal, safe time for a local sheriff deputy to contact the subjects and advise them about the existence of the arrest warrant. SSRA Federico told me that FBI executive management considered all potential alternatives and determined the SWAT takedown was the appropriate course of action. SSRA Federico noted that I appeared to be under stress and suggested speaking to the FBI's employee assistance program. SSRA Federico told me that he respected how I was standing on principle, but I was putting him in a difficult situation because Special Agents cannot refuse to participate in specific cases. He stated that he wished I just "called in sick" for this warrant but his hands were tied now that I told him that I was going to refuse to participate in any J6 cases. Per the Office of Personnel Management, "an employee is entitled to use sick leave for: personal medical needs, family care or bereavement, care of a family member with a serious health condition, and adoption-related purposes." SSRA Federico told me that the FBI plans to prosecute every subject

associated with J6 and he expected "another wave" of J6 subjects would be referred to the Daytona Beach Resident Agency for investigation and arrest. SSRA Federico asked how I thought the Special Agent in Charge (SAC) of FBI Jacksonville would react to my position. He told me that it sounded like my concerns were with FBI leadership and the overall nature of the J6 investigations. SSRA Federico threatened reprisal indirectly by asking how long I saw myself continuing to work for the FBI. He asked me to reconsider my position and told me that he would decide on his actions over the course of the weekend.

12. On August 22, 2022, I was contacted by Jacksonville's Assistant Special Agent in Charge (ASAC) Coult Markovsky, who requested that I attend a meeting at the FBI Jacksonville office the following afternoon. On August 23, 2022, I met with ASAC Markovsky and ASAC Sean Ryan. I again disclosed my concerns about potential DIOG policy violations employed during the J6 investigative processes. I told that the irregular case dissemination, labeling, and management processes could be considered exculpatory evidence the must be disclosed to defendants in accordance with the Brady rule. I expressed my concerns about violating citizens' Sixth Amendment rights due overzealous charging by the DOJ and biased jury pools in Washington D.C. I cautioned about the similarities between Ruby Ridge, the Governor Whitmer kidnapping case, and the J6 investigation. ASAC Markovsky said that I lacked perspective on the J6 prosecutions because I was not principally involved in the day-to-day investigations. He added that it is the FBI's job to gather facts, but we are not responsible for determining if an individual should be prosecuted. I countered that former FBI Director James Comey's actions indicated this was no longer an FBI practice when he stated that "no reasonable prosecutor" would bring charges against former Secretary of State Hillary Clinton.

13. The ASACs asked if I believed the J6 rioters committed a crime. I responded that some of the people who entered the Capitol committed crimes, but others were innocent. I elaborated that I believed some innocent individuals had been unjustly prosecuted, convicted, and sentenced. ASAC Markovsky unironically asked if I thought that the individuals who "killed police officers" should be prosecuted. I replied that there were no police officers killed on January 6, 2021. ASAC Markovsky told me that I was being a bad teammate to my colleagues. The ASACs threatened reprisal again by warning that my refusal could

amount to insubordination. References were made to my future career prospects with the FBI. ASAC Ryan suggested I might want to speak with the FBI's employee assistance program about my emotional concerns with J6 cases. The ASACs informed me that I could not refuse to participate if FBI leadership was comfortable that an operation is Constitutional, within FBI guidelines, and did not present an unnecessary risk to my safety.

14. I responded by again disclosing that the facts and concerns I presented demonstrated how the J6 investigations violate all three elements. I told them that I would not participate in any of these operations. At the conclusion of the meeting, the ASACs opined that they did not know how they would proceed with me from a disciplinary perspective. They emphasized that any punitive action would be a slow process. However, four hours later ASAC Markovsky emailed me the following act of reprisal: "After multiple conversations with SSRA Greg Federico and our continued conversations today with myself and ASAC Ryan, you continue to refuse to participate in an FBI mission to serve a lawful court order issued by a Federal Judge. You are not to report to the Daytona Beach RA tomorrow, August 24, 2022, and you will be placed on AWOL (Absent Without Leave) status. AWOL in itself is not disciplinary, but can lead to disciplinary charges, such as removal." ASAC Markovsky and ASAC Ryan stated that all the details of our meeting were Unclassified.

15. On September 1, 2022, I met with FBI Jacksonville Special Agent in Charge (SAC) Sherry Onks. SAC Onks told me that I had a reputation as a good Special Agent and expressed disappointment with my refusal to participate in the January 6th investigations. SAC Onks suggested that I do "some soul searching" and decide if I wanted to work for the FBI. SAC Onks said that it "sounded like I lost faith in the FBI and its leadership." SAC Onks stated that the J6 investigations were all legal, ethical, and in accordance with FBI procedure. She said that my refusal to participate in the cases meant that I did not trust my colleagues' work and indicated that I believed the Special Agents working on J6 were coopted into behaving unethically and immorally. I again disclosed by informing SAC Onks that I believed the investigations were inconsistent with FBI procedure and resulted in the violation of citizens' Sixth and Eighth Amendment rights. I added that many of my colleagues expressed similar concerns to me but had not vocalized their objections to FBI Executive Management. SAC Onks disagreed with

my premise and said that my views represented an extremely small minority of the FBI workforce. SAC Onks told me that she had never encountered my situation during her career. She recalled the fear she felt while sitting on the seventh floor of the J. Edgar Hoover Building on January 6, 2021 when protestors "seized the Capitol" and threatened the United States' democracy. SAC Onks reprised against me and admitted as much, when she informed me that she referred me to the FBI's Office of Professional Responsibility and Security Division. SAC Onks told me that the Security Division was assessing my security clearance.

16. In addition to the atypical Originating Office identification process for J6 cases, the process potentially violates Case Manager and Case File Management and Indexing policies listed in the FBI's Domestic Investigations and Operations Guide (DIOG). These potential violations include:

- Domestic Investigations and Operations Guide (DIOG) 3.3 (U) Special Agent/Task Force Officer (TFO)/Task Force Member (TFM)/Task Force Participant (TFP)/FBI Contractor/Others - Roles and Responsibilities
 - 3.3.1.10 (U) Serve as Investigation ("Case") Manager: (U//FOUO) If assigned responsibility for an investigation, manage all aspects of that investigation, until it is assigned to another person. It is the case manager's responsibility to ensure compliance with all applicable laws, rules, regulations, and guidelines, both investigative and administrative, from the opening of the investigation through disposition of the evidence, until the investigation is assigned to another person...
- Domestic Investigations and Operations Guide (DIOG) Appendix J: (U) Case File Management and Indexing
 - J.1 (U) Investigative File Management
 - J.1.3 (U) Office of Origin's (OO) Supervision of Cases (U//FOUO) The OO is responsible for proper supervision of Assessments and investigations in its own territory and being conducted in a LO. The FBI employee, usually an FBI Special Agent, to whom an investigation is assigned, is often referred to as the "Case Agent." An FBI employee is personally responsible for ensuring all logical investigation is initiated without undue delay, whether the employee is assigned in the OO or in a LO; this includes setting forth Action Required or

Information Only leads as appropriate for other offices or other FBI employees in his/her own office. The OO Case Agent has overall responsibility for supervision of the investigation..

The manipulative casefile practice creates false and misleading crime statistics, constituting false official federal statements 18 U.S.C. §1001. Instead of hundreds of investigations stemming from an isolated incident at the Capitol on January 6, 2021, FBI and DOJ officials point to significant increases in domestic violent extremism and terrorism around the United States. At no point was I advised or counseled on where to take my disclosure beyond the reprising officials above; the threatened reprisal constituted a *de facto* gag on my whistleblowing.

17. The acting officials who had knowledge of my disclosures as set forth above included SSRA Greg Federico, Jacksonville's Assistant Special Agent in Charge (ASAC) Coult Markovsky, ASAC Sean Ryan, and FBI Jacksonville Special Agent in Charge (SAC) Sherry Onks.

18. I was reprised against and instructed to not report to the Daytona Beach RA on August 24, 2022, and was placed on AWOL status. When I arrived at the FBI's Daytona Beach Field Office on the morning of September 19, 2022, I was brought into a meeting with my supervisor, ASAC, SAC, and security officer. I was told that my security clearance was suspended pending an investigation. My credentials, firearm, and badge were confiscated, and I was escorted from the building.

19. I also received the letter annexed hereto and made a part hereof dated September 16, 2022.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the above statement are true to the best of my knowledge.

Stephen M. Friend L.S.

Stephen M. Friend

September 21, 2022